

**STATE OF TEXAS**  
**DEPARTMENT OF INFORMATION RESOURCES**  
**CONTRACT FOR PRODUCTS AND RELATED SERVICES**  
**IMMIXTECHNOLOGY, INC.**

**1. Introduction**

**A. Parties**

This Contract for Products and Related Services (“Contract”) is entered into between the State of Texas (“State”), acting by and through the Department of Information Resources (“DIR”) with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and Immixtechnology, Inc. (“Vendor”), with its principal place of business at 8444 Westpark Drive, Ste. 200, McLean, VA 22102.

**B. Compliance with Procurement Laws**

This Contract is the result of compliance with applicable procurement laws of the State. DIR issued a solicitation on the Comptroller of Public Accounts’ Electronic State Business Daily, Request for Offer (RFO) DIR-TSO-TMP-225, on February 27, 2015, for Software, including Software as a Service, Products and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-TSO-TMP-225 shall be posted by DIR on the Electronic State Business Daily.

**C. Order of Precedence**

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor’s Historically Underutilized Businesses Subcontracting Plan; Appendix C, Pricing Index; Appendix D, License Subscription and Services Agreement; Exhibit 1, Vendor’s Response to RFO DIR-TSO-TMP-225, including all addenda; and Exhibit 2, RFO DIR-TSO-TMP-225, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1, and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

**2. Term of Contract**

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR may extend the Contract, by amendment for up to three (3) optional one-year terms. Additionally, the parties by mutual agreement may extend the term for up to ninety (90) additional calendar days.

**3. Product and Service Offerings****A. Products**

Products available under this Contract are limited to **Application Portfolio Management Software Products**, including Software as a Service Products, as specified in Appendix C, Pricing Index. Vendor may incorporate changes to their product offering; however, any changes must be within the scope of the RFO and products awarded based on the posting described in Section 1.B above. Vendor may not add a manufacturer's product line which was not included in the Vendor's response to the solicitation described in Section 1.B above.

**B. Services**

Services available under this Contract are limited to Application Portfolio Management Software services as specified in the RFO and Appendix C, Pricing Index. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

**4. Pricing**

Pricing to the DIR Customer shall be as set forth in Appendix A, Section 8, Pricing, Purchase Orders, Invoices and Payment, and as set forth in Appendix C, Pricing Index, and shall include the DIR Administrative Fee.

**5. DIR Administrative Fee**

**A)** The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is three-quarter of one percent (0.75%). Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$750.00.

**B)** All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor without further requirement for a formal contract amendment. Any change in the administrative fee shall be incorporated by Vendor in the price to the Customer.

**6. Notification**

All notices under this Contract shall be sent to a party at the respective address indicated below.

**If sent to the State:**

Dana L. Collins, CTPM, CTCM  
Manager, Contract and Vendor Management  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 936-2233  
Facsimile: (512) 475-4759

Email: [dana.collins@dir.texas.gov](mailto:dana.collins@dir.texas.gov)

If sent to the Vendor:

Alicia Danny  
immixtechnology, Inc.  
8444 Westpark Drive, #200  
McLean, Virginia 22102  
Phone: (703) 663-1924  
Facsimile: (703) 752-0611  
Email: [Alicia\\_Danny@immixgroup.com](mailto:Alicia_Danny@immixgroup.com)

## **7. Software License and Service Agreements**

### **A. License Subscription and Services Agreement**

1) Customers acquiring software licenses under the Contract shall hold, use and operate such software subject to compliance with the License Subscription and Services Agreement set forth in Appendix D of this Contract. No changes to the License Subscription and Services Agreement terms and conditions may be made unless previously agreed to between Vendor and DIR. Customers may not add, delete or alter any of the language in Appendix D. Vendor and Order Fulfiller shall make the License Subscription and Services Agreement terms and conditions available to all Customers at all times.

2) Compliance with the License Subscription and Services Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the License Subscription and Services Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the License Subscription and Services Agreement terms and conditions.

### **B. Shrink/Click-wrap License Agreement**

Regardless of any other provision or other license terms which may be issued by Vendor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of a Purchase Order for products licensed under this Contract, or the fact that such other agreement may be affixed to or accompany software upon delivery (shrink-wrap), the terms and conditions set forth in this Contract shall supersede and govern the license terms between Customers and Vendor. **It is the Customer's responsibility to read the Shrink/Click-wrap License Agreement and determine if the Customer accepts the license terms as amended by this Contract. If the Customer does not agree with the license terms, Customer shall be responsible for negotiating with the reseller to obtain additional changes in the Shrink/Click-wrap License Agreement language from the software publisher.**

**C. Service Agreement**

Services provided under this Contract shall be in accordance with the License Subscription and Services Agreement as set forth in Appendix D of this Contract. No changes to the License Subscription and Services Agreement terms and conditions may be made unless previously agreed to by Vendor and DIR.

**D. Conflicting or Additional Terms**

In the event that conflicting or additional terms in Vendor Software License Agreements, Shrink/Click Wrap License Agreements, Service Agreements or linked or supplemental documents amend or diminish the rights of DIR Customers or the State, such conflicting or additional terms shall not take precedence over the terms of this Contract.

**8. Authorized Exceptions to Contract or any Appendices.**

**A. Appendix A, Section 8.A, Manufacturer's Suggested Retail Price (MSRP) or List Price** is hereby restated in its entirety as follows:

MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by the trade. A price list especially prepared for a given solicitation is not acceptable. Notwithstanding the foregoing, the MSRP or List Price for products provided under Contractor's General Services Administration (GSA) IT 70 Schedule Contract GS-35F-0265X and GS-35F-0511T shall be based on the prices published by GSA and Contractor.

**B. Appendix A, Section 8.G, Change to Prices** is hereby restated in its entirety as follows:

Subject to the requirements of this section, Vendor may change the price of any product or service at any time, based upon changes to the MSRP or Contractor's GSA IT70 Schedule Contract GS-35F-0265X and GS-35F-0511T, but discount levels shall remain consistent with the discount levels specified in this Contract.

- 1) Price increase or decrease change requests must be requested with a signed cover letter indicating the change in price. Price increase requests must be accompanied by a copy of the manufacturer or publisher's price list.
- 2) Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.
- 3) Requests for price increases will be accepted or rejected by DIR within thirty (30) calendar days after receipt of a properly submitted request. Increases that are not accepted within thirty (30) calendar days will be deemed rejected. If a properly submitted increase is rejected, Vendor may request that the product or service rejected be removed from the Contract. The product or service will be removed from the Contract upon execution of a written Contract amendment, which shall be transmitted to Vendor by DIR within thirty (30) calendar days after receipt of the written request to remove the product or service and executed by both parties without undue delay. Existing pricing must be honored up to the date of execution of the Contract amendment. Prices may not be increased for at least ninety

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(90) calendar days after the contract start date. Price reductions will be accepted at any time.

This Contract is executed to be effective as of the date of last signature.

**IMMIXTECHNOLOGY, INC.**

Authorized By: Signature on File

Name: Scott Needleman

Title: Vice President

Date: 6/23/2015

**The State of Texas, acting by and through the Department of Information Resources**

Authorized By: Signature on File

Name: Wayne Egeler for Dale Richardson

Title: Chief Operations Officer

Date: 6/24/2015

Office of General Counsel: D. Brown, Signature on File, 6/24/2015